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FILE

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SEP 16 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

"KOBURT"

September 16, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

92-185 /

Dear Ms. Searcy:

Transmitted herewith, on behalf of William F. O'Shaughnessy and Shirley A. Penrod, applicants for a new Class A FM station in South Waverly, Pennsylvania, are an original and six copies of a "Joint Request for Approval of Settlement Agreement" which should be directed to Judge Sippel.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

Rainer K. Kraus

Rainer K. Kraus

Enclosure

cc(w/encl.)

Robert L. Olender, Esquire

No. of Copies rec'd
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SEP 16 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The settlement agreement calls for dismissal of the Penrod application in return for the payment by O'Shaughnessy of Six Thousand Dollars (\$6,000) as partial reimbursement of Penrod's legitimate and prudent expenses in filing her application. Mrs. Penrod's affidavit, Attachment B, establishes that as of December 7, 1991, when settlement discussions first began, she had legiti-

mate and prudent expenses--not including her hearing fee--
totalling \$11,838.20.

The affidavit of William F. O'Shaughnessy which is
Attachment C, attests that the sole payment in return for
dismissal of the Penrod application is the sum of \$6,000. Since
there are no qualifying issues with respect to either party and
this agreement will obviously expedite the provision of South
Waverly's first broadcast service, the proposed settlement is in
the public interest and it is respectfully requested that it be
effectuated by dismissing the Penrod application and granting
that of Mr. O'Shaughnessy.

Respectfully submitted,

SHIRLEY A. PENROD

By


Robert L. Olender

Baraff, Koerner, Olender & Hochberg
5335 Wisconsin Avenue, N. W.
Washington, D. C. 20015
(202) 686-3200

Her Attorney

WILLIAM F. O'SHAUGHNESSY

By


Rainer K. Kraus

Koteen & Naftalin
1150 Connecticut Avenue, N. W.
Suite 1000
Washington, D. C. 20036
(202) 467-5700

His Attorney

September 16, 1992

SETTLEMENT AGREEMENT

Shirley A. Penrod (Penrod) and William F. O'Shaughnessy (O'Shaughnessy) do this 12th day of September, 1992, hereby agree, in connection with their respective applications for a new Class A FM station on Channel 241 in South Waverly, Pennsylvania, that Penrod will forthwith request dismissal of her application so that the O'Shaughnessy application can be granted without contest in return for O'Shaughnessy's payment to Penrod of Six Thousand Dollars (\$6,000.00) on the following terms and conditions:

1. The \$6,000 shall be placed in escrow at the time this Agreement is filed with the FCC with the law firm of Baraff, Koerner, Olender & Hochberg as a joint escrow of Robert L. Olender, counsel for Penrod and Rainer K. Kraus, counsel for O'Shaughnessy.


2. Counsel for O'Shaughnessy shall, to the extent necessary, draft all settlement documents, agreements and affidavits that must be filed with the Federal Communications Commission and these documents shall be reasonably satisfactory to counsel for Penrod.

3. The escrow funds shall be released by the joint escrow agents upon the issuance of an order or orders from Judge Sippel both dismissing the Penrod application and granting the O'Shaughnessy application, but without waiting for finality of any such order or orders.

4. The parties shall cooperate fully and promptly to submit to the Commission whatever documents may be necessary to effectuate this agreement.

This Agreement shall be construed in accordance with the internal laws of the District of Columbia.

Respectfully submitted,



William F. O'Shaughnessy

Shirley A. Penrod

4. The parties shall cooperate fully and promptly to submit to the Commission whatever documents may be necessary to effectuate this agreement.

This Agreement shall be construed in accordance with the internal laws of the District of Columbia.

Respectfully submitted,

William F. O'Shaughnessy


Shirley A. Penrod

AFFIDAVIT

I, Shirley A. Penrod, applicant for Channel 241A, South Waverly, Pennsylvania (File No. BPH-910708ME) do hereby submit pursuant to Section 73.3525 of the Commission's rules the following legitimate and prudent expenses totalling \$11,838.20, which were incurred in the preparation and prosecution of my application:

- Engineering fees from the firm of Independent Broadcast Consultants in the amount of \$1,760.70. An affidavit from William Sitzman, President, is attached.
- Legal fees from the firm of Baraff, Koerner, Olender & Hochberg, P.C. in the amount of \$8,047.50. An affidavit from Robert Olender, Esq. is attached.
- FCC filing fee (Form 301) \$2,030.00.

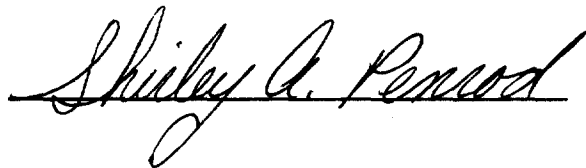
Aside from the legitimate and prudent expenses set forth above, I have not been promised nor have I been paid any other consideration by Mr. O'Shaughnessy for the dismissal of my application and grant of his application. It is in the public interest to approve this Agreement since it will expedite service to South Waverly and conserve the resources of the FCC. My application was not filed for the purpose of reaching or effectuating such an agreement.

This information is provided under penalty of perjury.

Respectfully submitted,

SHIRLEY A. PENROD

By:



Date: December 7, 1991
26047.00\Penrod.D05

AFFIDAVIT OF WILLIAM F. O'SHAUGHNESSY

1. I, William F. O'Shaughnessy, an applicant for Channel 241A in South Waverly, Pennsylvania, File No. BPH-910703MK, do hereby submit, pursuant to Section 73.3525 of the Commission's rules, this affidavit.

2. I have entered into a settlement agreement with Shirley A. Penrod, a competing applicant for the same South Waverly facility, in order to expedite service to South Waverly and conserve the resources of the Federal Communications Commission since no hearing will now be necessary between us.

3. My application was not filed for the purpose of reaching or carrying out this agreement.

4. The exact nature and amount of consideration which I have promised Shirley A. Penrod is Six Thousand Dollars (\$6,000.00), which is substantially less than the itemized accounting of her expenses set forth in her affidavit of December 7, 1991.

5. There is no other agreement, oral or written, relating to this matter except the settlement agreement which reflects these terms and is being filed with the FCC.

William F. O'Shaughnessy
William F. O'Shaughnessy

September 11, 1992

CERTIFICATE OF SERVICE

I, Judy Cooper, a legal secretary in the law office of Koteen & Naftalin, hereby certify that on the 16th day of September, 1992, copies of the foregoing "Joint Request for Approval of Settlement Agreement" were deposited in the U.S. mail, postage prepaid, addressed to:

Honorable Richard L. Sippel*
Administrative Law Judge
Federal Communications Commission
2000 L Street, N. W.
Room 214
Washington, D. C. 20554

Charles Dziedzic, Esquire*
Hearing Branch, Enforcement Division
Federal Communications Commission
2025 M Street, N. W. Room 7212
Washington, D. C. 20554

Gary S. Kalagian, Chief*
Data Management Staff
Federal Communications Commission
1919 M Street, N. W. Room 350
Washington, D. C. 20554

Robert L. Olender, Esquire
Baraff, Koerner, Olender & Hochberg
5335 Wisconsin Avenue, N. W.
Suite 300
Washington, D. C. 20015


Judy Cooper

*By Hand Delivery